

the nontax portion of the trust as of the date of allocation ($.2 \times \$800,000$). The denominator of the applicable fraction is \$800,000. Accordingly, the applicable fraction with respect to the trust after the allocation is .325 ($\$260,000 / \$800,000$) and the inclusion ratio is .675 ($1 - .325$).

Example 5. Taxable termination. The facts are the same as in Example 4 except that, in 2006, when the value of the property is \$1,200,000, C dies and the trust corpus is distributed to GC. The termination is a taxable termination. If no further GST exemption has been allocated to the trust, the applicable fraction remains .325 and the inclusion ratio remains .675.

Example 6. Estate Tax Inclusion Period. (i) T transferred property to an inter vivos trust the terms of which provided T with an annuity payable for 10 years or until T's prior death. The annuity satisfies the definition of a qualified interest under section 2702(b). The trust also provided that, at the end of the trust term, the remainder will pass to GC or GC's estate. The property transferred to the trust consisted of property subject to chapter 13 that has a value of \$100,000 and property not subject to chapter 13 that has a value of \$400,000. T allocated \$100,000 of GST exemption to the trust. If T dies within the 10 year period, the value of the trust principal will be subject to inclusion in T's gross estate to the extent provided in sections 2103 and 2104(b). Accordingly, the ETIP rule under paragraph (c)(3) of this section applies.

(ii) In year 6 of the trust term, T died. At T's death, the trust corpus had a value of \$800,000, and \$500,000 was includible in T's gross estate as provided in sections 2103 and 2104(b). Thus, \$500,000 of the trust corpus is subject to chapter 13 and \$300,000 is not subject to chapter 13. The \$100,000 GST exemption allocation is effective as of T's date of death. Also, the nontax portion of the trust and the applicable fraction are determined as of T's date of death. In this case, the nontax portion of the trust is .375, determined as follows: \$300,000 (the value of the trust not subject to chapter 13) / \$800,000 (the value of the trust). The numerator of the applicable fraction is \$400,000, determined as follows: \$100,000 (GST exemption previously allocated to the trust) plus \$300,000 (the value of the nontax portion of the trust). The denominator of the applicable fraction is \$800,000. Thus, the applicable fraction with respect to the trust is .50, unless additional exemption is allocated to the trust by T's executor or the automatic allocation rules of § 26.2632-1(d)(2) apply.

Example 7. The facts are the same as in Example 6 except that T survives the termination date of T's retained annuity and the trust corpus is distributed to GC. Since the trust was not included in T's gross estate, the ETIP rules do not apply. Accordingly, the nontax portion of the trust and the applicable fraction are determined as of the date of the transfer to the trust. The nontax portion of the trust is .80 ($\$400,000 / \$500,000$). The numerator of the applicable fraction is \$500,000 determined as follows: \$100,000 (GST exemption allocated to the trust) plus \$400,000 (the value of the nontax portion of the trust). Accordingly, the applicable fraction is 1, and the inclusion ratio is zero.

(e) **Transitional rule for allocations for transfers made before December 27, 1995.** If an NRA made a GST (inter vivos or testamentary) after December 23, 1992, and before December 27, 1995 that is subject to chapter 13 (within the meaning of § 26.2663-2), the NRA will be treated as having made a timely allocation of GST exemption to the transfer in a calendar year in the order prescribed in section 2632(c). Thus, a NRA's unused GST exemption will initially be treated as allocated to any direct skips made during the calendar year and then to any trusts with respect to which the NRA made transfers during the same calendar year and from which a taxable distribution or a taxable termination may occur. Allocations within the above categories are made in the order in which the transfers occur. Allocations among simultaneous transfers within the same category are made pursuant to the principles of section 2632(c)(2). This transitional allocation rule will not apply if the NRA transferor, or the executor of the NRA's estate, as the case may be, elected to have an automatic allocation of GST exemption not apply by describing on a timely-filed Form 709 for the year of the transfer, or a timely filed Form 706NA, the details of the transfer and the extent to which the allocation was not to apply.

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PARTS 28-29 [RESERVED]